

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
 )  
PUBLIC UTILITIES COMMISSION )  
 )  
Instituting a Proceeding to Investigate )  
Competitive Bidding for New Generating )  
Capacity in Hawaii. )

Docket No. 03-0372

PUBLIC UTILITIES  
COMMISSION

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**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
PUBLIC UTILITIES COMMISSION'S INFORMATION REQUESTS**

**AND**

**CERTIFICATE OF SERVICE**

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COOPERATIVE

BEFORE THE PUBLIC UTILITIES COMMISSION  
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**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
PUBLIC UTILITIES COMMISSION'S INFORMATION REQUESTS**

COMES NOW Kauai Island Utility Cooperative, by and through its respective attorneys, and hereby submits its responses to the Public Utilities Commission's Information Requests to the Parties and Participants dated May 13, 2005.

DATED: Honolulu, Hawaii June 9, 2005.



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Kent D. Morihara  
Michael H. Lau

Attorneys for KAUAI ISLAND UTILITY  
COOPERATIVE

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-1 (Parties urging competitive bidding) Ref:** CA SOP at 3; HESS SOP at 1; HREA SOP at 2.

Please identify, if any, specific examples of efficiencies or innovations foregone in Hawaii as a result of the absence of competitive bidding?

**Response:** KIUC is not aware of any specific examples it has been involved with in which efficiencies or innovations may have been foregone in Hawaii as a result of the absence of competitive bidding.

However, it should be noted that KIUC, then Kaua'i Electric, used a competitive bidding process in 1995 for its power purchase agreement with Kauai Power Partners. KIUC cannot speculate on any efficiencies or innovations that would have been foregone if KIUC had not used a competitive bidding process at that time.

**Sponsor:** Joe McCawley  
Tim Blume

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**PUC-IR-3 (All Parties)** Ref: HECO SOP, Exhibit A at 4; HREA-HECO-IR-9.

These references address the potential for an increased reliability risk as a result of the implementation of competitive bidding and purchased power. Please elaborate on the solutions to this potential problem, and specifically identify potential mitigating factors that can be incorporated into the competitive bid process.

**Response:** As stated in KIUC's Statement of Position (Issue 2.a, page 7), KIUC believes that a bidder's financial strength, past performance, and ability to meet project scope requirements are very important criteria that must be fully evaluated as part of competitive bidding in order to address this reliability risk.

Similar to an experience HECO referenced in their Exhibit A to their Statement of Position, KIUC, when operating as KE, also had an independent power producer (IPP) (Lihue Plantation) unexpectedly request termination of a power purchase agreement (PPA). While the contract required a two-year notice of termination, the IPP provided less than one year advance notice.

Unlike the continental USA, where the reliability risk of a failed IPP is greatly minimized by a utility that is interconnected to a large transmission grid, electric utilities in Hawaii do not have this reliability fallback. For this reason, KIUC believes it is imperative that Hawaii electric utilities have the ability to develop the competitive bidding RFP, evaluate the bidders' ability to meet the RFP requirements, and ultimately select the winning bidder. Other than having this ability and being able to levy possible financial penalties on an IPP for lack of performance, KIUC is not aware of what other specific mitigating factors could be incorporated into the competitive bidding process to fully remove reliability risks.

The challenge, in Hawaii, is how to legally assign and enforce payment of penalties associated with risks and if and how a utility should plan for unexpected risks.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUC-IR-10 (All Parties)**

If the Commission requires competitive bidding, what would be the disadvantages of requiring independent competitors to limit their participation to turnkey projects, at least initially, so that the utility would have maximum control over the project operations upon construction?

**Response:** KIUC interprets this question as asking for the disadvantages to the utility of limiting a developer to only engineering, procuring, and constructing a generation project, where, upon completion of construction, the utility would acquire and operate the project.

Based on this interpretation, KIUC believes that there would be minimal disadvantages and in fact, for KIUC, there could be advantages of turnkey projects in a competitive bidding environment. As an electric cooperative with access to low cost funding, turnkey projects are options that could maximize benefits to KIUC's member/customers.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUC-IR-11 (HECO and KIUC) Ref: HECO-CA-IR-32.**

- a. Please indicate whether power purchase agreements have evolved over time to better allocate risks between the utility and the independent power producer ("IPP"), and if so, identify those factors that have led to this improvement.

**Response:** KIUC believes that the risks referred to in this question are specific to "capacity and minimum energy" Power Purchase Agreements (PPAs) as opposed to "as-available energy" PPAs. KIUC's experience with PPAs that contain these risk components is limited to the agreements entered into with Lihue Plantation and Kauai Power Partners.

A comparison of the above-referenced PPAs determined that the PPA negotiations with Kauai Power Partners were not significantly different from the earlier PPA negotiations with Lihue Plantation. Provisions pertaining to items such as performance, reliability, and interconnection standards were and continue to be incorporated in KIUC's PPA negotiations. Please see KIUC's response to PUC-IR-3 above regarding the challenges to mitigate risks.

- b. Please identify those factors that can reasonably be incorporated into future power purchase agreements, and that would help better allocate risks between the utility and the IPP.

**Response:** See the response to part (a) above.

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**PUC-IR-12** Ref: HECO-HREA-IR-5(b)(2)at 6 states:

For example, would the failure to meet predicted system availability become a basis for a penalty? We are not aware of case where this has been done elsewhere. Also, if the utility is not going to be subjected to a penalty, which is the current case with our RPS law, why should the windfarm owner/operator?

- b. **(All Parties)** What type of provisions can be reasonably incorporated into as-available contracts to encourage the IPP to improve on system availability and/or reliability?

**Response:** Within the context of this question, KIUC considers availability and reliability as two very different qualities with different meanings.

KIUC defines an as-available contract with an IPP to be a contract in which the utility purchases whatever excess energy is produced by the IPP facility whenever it is produced (i.e., whenever it is available). The IPP is compensated for the purchase of the excess energy made available at the contracted and negotiated price.

On the other hand, for as-available contracts, reliability relates more to the quality of the energy provided (voltage, frequency, etc.) rather than how much is produced or made available (i.e., kw or kwh amount of energy). Any contract with an IPP, whether for firm, non-firm, renewable, as-available, etc., should have a minimum reliability criteria requirement. By the inherent nature of an as-available contract, however, a utility cannot or should not rely upon that IPP for either a specified amount of energy (kw or kwh) or specified level of improved reliability, above which is required in the contract.

KIUC believes that the contracted purchase price for excess energy should contain sufficient incentives for an as-available IPP to be available as often as practical. Provisions in a PPA to encourage an IPP to meet higher standards of availability and reliability include specifications

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**PUC-IR-12 (cont.)**

for availability, power quality, and reliability that exceed the minimum ranges contained in the contract. Incentives should be offered when these minimums are met, likewise, penalties would be imposed when the minimums are not met.

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**PUC-IR-18 (All parties, except HREA) Ref: HECO-HREA-IR-12 at 15 states:**

[Ratepayers]...will bear the risk related to...failure to obtain appropriate authorizations...

- a. Who should bear the risk and associated costs of a winning bidder's failure to obtain appropriate authorizations within a specified time period - the utility, the winning bidder or ratepayers?

**Response:** The winner bidder should bear the risk and costs associated with that bidder's failure to obtain appropriate authorizations within a specified time period.

- b. What mechanisms, if any, are available to guard against the risk of delays arising out of inability to obtain permits or other authorizations?

**Response:** See the response to PUC-IR-3.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUR-IR-19 (All Parties) Ref: CA SOP at 60.**

...an electric utility must be prepared with a "backstop" plan (i.e., the specific resources that the utility would develop and put into rate base if necessary to meet its service obligations. The backstop plan may be satisfied by the utility's resource proposals.

If a utility has a "backstop" plan that can be satisfied by its resource proposal, does this mean that it is always effectively competing with other bidders?

**Response:** KIUC's interprets this question as applying to a utility that develops and submits a proposal in response to a competitive bidding RFP. As stated in KIUC's Statement of Position on pages 3 to 4: "KIUC also recognizes that it is a very small electric utility and does not have the staff or expertise, on its own, to develop and build large capital projects such as new electric generators. As such, it makes much more sense for KIUC to specify generation requirements in a Request for Proposals ('RFP') and then allow third parties to provide bids that KIUC will evaluate per established criteria mentioned in the RFP." Accordingly, KIUC does not currently plan to submit a bid in response to a competitively bid RFP, and as such, respectfully submits that this information request does not apply to KIUC.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUC-IR-20 (HECO, KIUC) Ref: HECO SOP, Exhibit B at 1.**

The HECO exhibit notes that PURPA requires utilities to offer to purchase capacity and energy from qualifying facilities at the utility's avoided cost.

- a. If a utility is in the middle of a competitive bidding process for a specific resource requirement, and it receives an offer from a qualifying facility that meets that resource requirement, is the utility required to purchase from the qualifying facility under PURPA?

**Response:**

Not necessarily. PURPA outlines the criteria under which a utility is required to offer to purchase from a qualifying facility (QF) and the conditions under which a QF must operate to receive this offer. This is not the same as PURPA requiring a utility to purchase from a QF.

As clarification, in exchange for a QF meeting operating and other requirements outlined by PURPA, a utility is required to offer to purchase the energy and or capacity from a QF at its avoided cost. Should the QF decide to accept the avoided cost as payment, and agrees to a contract that conforms to the conditions outlined by PURPA and as incorporated in Hawaii Administrative Rules, Title 6, Chapter 74, KIUC believes that the utility is then required to purchase from that QF. In that situation, if such a contract would meet the needs of a competitively bid RFP, then KIUC believes that utility is required to purchase from that QF even if the utility is otherwise in the middle of a competitive bidding process. If, however, the QF were to request a contract that included deviations from the criteria outlined in PURPA, say, for example, a contract that guaranteed utility purchase of power at all times, and/or a contract that included a defined purchase price for a specified duration, then, KIUC's interpretation is that the QF has declined the utility's offer to purchase, PURPA no longer applies, and any subsequent power purchase discussions are negotiable, as with any non-QF IPP. Under this latter situation, which KIUC believes occurs the majority of the time; KIUC believes that the utility is not under an obligation to purchase from the QF.

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**PUC-IR-20 (cont.)**

- b. How do the utilities envision the competitive bid process working in conjunction with the obligations imposed on the utilities by PURPA?

**Response:** If a QF enters into a PURPA-regulated agreement with KIUC to provide energy or capacity that would fully accomplish the objectives of a competitively bid RFP, KIUC would then retract that RFP. However, if the QF agreement instead only modified the scope or some of the criteria set forth in the RFP, KIUC would then reformulate and reissue the RFP.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUC-IR-23 (All Parties)**

What measures can and should be taken to avoid self-dealing or an unfair competitive advantage over other bidders (or even the appearance of such)?

**Response:** See the response to PUC-IR-26 below.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUR-IR-24 (All Parties)**

What is the desirable outcome of this proceeding -- a specific competitive bidding procedure, a specific change to the IRP process, a specific model RFP, a specific model PPA, or anything else?

**Response:** KIUC believes that its current competitive bidding process, as outlined in its Statement of Position and as successfully utilized in its 1995 RFP, is an excellent starting point for KIUC to further develop and enhance a competitive bidding process that incorporates "electric cooperative best practices". With regards to this docket, KIUC is hopeful that the Commission will concur and allow KIUC to continue to develop and modify, as appropriate, its own competitive bidding process. See the response to PUC-IR-26 below.

KIUC would like to point out, however, that upon further review of its Statement of Position, KIUC realized that a statement made in its Statement of Position should be clarified. In particular, in its discussion of Issue 3 on pages 8-9 of its Statement of Position, KIUC states the following:

KIUC believes that the outcome of this docket will identify existing or establish new guidelines to promote fair competitive bidding for new generation capacity on Hawaii. KIUC also believes that any guidelines identified per this docket that are applicable to a cooperative electric utility should be consistent with those KIUC has included in its proposed IRP Framework.

As clarification, KIUC would like to point out that the docket to which KIUC is referring to in the above discussion is Docket No. 05-0075 (opened by the Commission to investigate KIUC's proposed revised IRP framework) and not this competitive bidding docket.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUC-IR-25 (All Parties)** Ref: HECO SOP at 12; CA-HECO-IR-6; HREA-HECO-IR-14.

- a. Should the competitive bidding process be of a "framework" nature, i.e. a set of guidelines in the form of an enforceable Commission order (which would involve an evidentiary hearing to test the recommendations of the various parties to the proceeding)?

**Response:** No. Please see the response to PUC-IR-26 for more details.

- b. If the answer to (a) is "yes", then if the Commission does decide to initiate a proceeding to develop the competitive bidding "framework", should it hold public hearings, workshops and/or panel format hearings?

**Response:** Not applicable. See the response to part (a) above.

- c. If the answer to (a) is "no", then should the competitive bidding process be established through a rulemaking proceeding (which would necessitate public hearings and comments)?

**Response:** See the response to PUC-IR-26.

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**PUC-IR-26 (All Parties except CA) Ref: CA SOP at 4; HECO-CA-IR-4.**

- a. As advocated by the Consumer Advocate, should each utility be allowed to design its own competitive bidding process according to current "best practices," subject to commission approval?

**Response:** KIUC concurs with the Consumer Advocate that each utility should be allowed to design its own competitive bidding process according to current "best practices", subject to Commission approval. This is especially true in KIUC's situation. As the first and only member-owned electric cooperative in the State of Hawaii, KIUC believes that it is especially appropriate for KIUC to be allowed to design its own competitive bidding process, subject to Commission approval, to allow KIUC to incorporate "best practices" that insure overall benefits to its member/customers.

- b. How should "best practices" be determined?

**Response:** In general, components of "best practice" may include, but are not limited to, financial strength, cost, ability to meet project timelines, history of performance, resumes for key management persons, and references. See KIUC's Statement of Position, Response to Issue 2a. In addition, "best practice" must not be set on any fixed formula or other rigid parameters, but must remain flexible enough to adapt as technologies and practices advance and/or evolve over time.

- c. Should the Commission provide guidelines to the utilities regarding what it considers to be current "best practices"?

**Response:** KIUC believes that a specific set of Statewide guidelines for "best practices" could possibly inadequately address the inherent aspects associated with a member-owned cooperative. However, if the Commission were to establish Statewide guidelines, KIUC believes that these guidelines should be general in nature or at least flexible enough to account for the differences between an electric cooperative such as KIUC and an investor-owned utility.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUR-IR-27 (All Parties) HECO SOP, Exhibit A at 34 states:**

... the development of competitive bidding rules and guidelines should be developed from the ground up without superimposing another state's system directly in Hawaii.

Is HECO aware of any state system that could profitably be used as a starting point for developing Hawaii's competitive bidding rules or guidelines, in order to reduce the cost and time required to develop them from the ground up? What aspects of such state's approach are particularly helpful?

**Response:** KIUC is not familiar enough with other state sponsored rules and/or regulations on utility competitive bidding policies to provide a response to this information request at this time.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUC-IR-29 (All Parties except HREA) Ref: HREA SOP at 11-12; HREA-HECO-IR-11; HREA-KIUC-IR-1.**

Please comment on the competitive bidding models offered by HREA, where the utility would identify the site, capacity, and (possibly) fuel type, then prepare and submit a "facility bidding baseline" to an independent contractor who would solicit and review bids against the utility's baseline.

**Response:** See KIUC's response to HREA-KIUC-IR-1.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUR-IR-37 (All Parties except CA) Ref: e.g., CA SOP at 51-54.**

Can a competitive bidding program succeed in the absence of the changes proposed by the CA to the IRP Process?

**Response:** In December 2004, KIUC filed for revisions to the "Framework for Integrated Resource Planning" to reflect the cooperative ownership nature of KIUC. By Order No 21707, the Commission opened Docket No. 05-0075 to review and investigate KIUC's proposed revisions. In that context, KIUC is not certain if/how the Consumer Advocate's proposed changes would be applied to KIUC's Revised Framework. However, KIUC (like its predecessor KE) is a proponent of procuring competitive bids with respect to generation additions. As noted in KIUC's Statement of Position (page 3), in 1995, KE was the first electric utility in Hawaii to formally complete a competitive bidding for its then-planned generation addition. In KIUC's opinion, this 1995 competitive bidding process to select and build a generation facility helped to ensure that the resulting addition would provide both economic and reliability benefits to KIUC's members.

**Sponsor:** Joe M<sup>c</sup>Cawley  
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**PUC-IR-39 (All Parties)**

- a. Should the competitive bidding process be an "open" bidding process, wherein the utility or the commission develops self-scoring criteria and bidders know what the utility is seeking and how the bid will be evaluated?

**Response:** See the response to part (b) below.

- b. Or should it be a "closed" bidding process, wherein the utility provides general guidance about planning objectives, but does not reveal all of the information about the evaluation process?

**Response:** The bidders should have enough information to understand the selection criteria KIUC believes to be important for that particular RFP. KIUC has a concern that a self-scoring RFP provides a bidder the opportunity to bias their proposals. Bidders may unrealistically overstate or understate different aspects of their proposals to manipulate their score.

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**PUC-IR-40 (All Parties) Ref: CA-HECO-IR-7.**

- a. Should competitive bidding be required for all transactions, required but subject to exceptions, or merely encouraged but not required?

**Response:** KIUC would like to point out that a loan covenant with its lender, Rural Utility Services (RUS), specifically requires KIUC to use competitive procurement to the greatest extent practical. As such, except under certain circumstances, KIUC must use competitive procurement for obtaining all goods and services when a RUS loan or loan guarantee is involved.

- b. If there are to be exceptions to a competitive bidding requirement, what should those exceptions be based on?

**Response:** As noted in its discussion of Issue 2 of its Statement of Position (page 6), KIUC believes a competitive bidding requirement should not be imposed when KIUC is engaged in a partnership with another entity, does not have sole authority for making key decisions within this partnership, and when the partnership was created in response to unique opportunities to provide integrated solutions to multiple issues.

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**PUC-IR-41 (All Parties) Ref: HECO-HREA-IR-6.**

- a. Should there be a "dollar threshold above which competitive bids would be required"?

**Response:** KIUC believes that when it is appropriate to competitively bid for a new electric capacity and/or energy supply, there should be no dollar threshold under which competitive bidding is not applicable.

Specifically regarding retrofits, KIUC believes that Section 2.3.g.2 of General Order No. 7, as recently amended, pertaining to the requirements of a utility to acquire Commission authorization for any capital project expected to exceed \$2.5 million is adequate and provides a proper means to ensure that these types of projects are prudent.

- b. How should this dollar threshold be determined, and how often should it be reevaluated?

**Response:** As mentioned above, when it is appropriate to competitively bid for a new electric capacity and/or energy supply, there should be no dollar threshold under which competitive bidding is not applicable.

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**PUC-IR-42 (All Parties) Ref: CA-HECO-IR-7.**

Should "near-term" needs be exempted from the competitive bidding process? If so, how should "near-term" be defined?

**Response:** When used in this context, KIUC defines "near-term" needs as capacity or energy needs that require a decision to be made regarding additional generation being placed in service to allow the utility to continue meeting its adequacy of supply requirement. Near-term needs should be exempted from the competitive bidding process only when there is an emergency need for capacity and/or energy that must be addressed on an expedited basis. Otherwise, KIUC does not believe that near-term needs should be exempted from the competitive bidding process.

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**PUC-IR-44 (All Parties)** Ref: CA-HECO-IR-9; HECO-HREA-IR-11.  
IR57

Should the competitive bidding process differ depending on what type of resource is to be acquired (e.g., renewable resources, new technologies, and traditional resources; supply-side and demand-side resources, as-available v. firm capacity resources; and distributed resources)?

**Response:** No, KIUC believes, in general, that the process associated with competitive bidding is independent of the type, size, location, etc. of the resource to be acquired. Having said this, however, the utility should have the option as to whether or not to use one or multiple RFPs to solicit bids. KIUC is aware that some utilities have released an RFP for firm capacity while simultaneously releasing an RFP requesting bids for non-firm energy.

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**PUR-IR-45 (All Parties)**

Concerning relations between developers and utilities, what are the most likely areas of dispute, and what Commission involvement (e.g., rules upfront, vs. dispute resolution later) is best suited to minimize these disputes?

**Response:** Regarding the entire competitive bidding process, which includes developing, releasing and evaluating bids associated with an RFP and subsequent negotiations, leading to a PPA, KIUC believes that some of the most likely areas of dispute are price, schedule, and performance. KIUC believes that it is the utility's responsibility to develop an RFP that clearly and specifically states the objectives and scope-of-work, after which it is up to the utility and the bidder to negotiate in good faith. KIUC believes that the existing role of the Commission regarding review, approval and dispute resolution of PPAs is proper and adequate.

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**PUC-IR-52 (All parties) Ref: CA SOP at 20.**

Competitive bidding is one [mechanism for procurement]. The others include auctions, standard offers and selection through direct negotiations as well as approaches that combine elements of these mechanisms...

- a. Should the Commission consider mechanisms like auctions, standard offers and others identified by the CA as part of this competitive bidding docket?

**Response:** KIUC believes that these other mechanisms should not be considered as part of this docket. Having said that, however, KIUC states the following regarding these mechanisms:

Regarding auctions, KIUC agrees with footnote 19 in the CA's Statement of Position indicating that auctions may not be applicable to Hawaii's energy market.

Regarding standard offers, KIUC believes that this mechanism already exists under HAR 6-74. The CA's Statement of Position describes how this mechanism is typically geared for smaller sized PURPA qualifying facilities, which is specifically addressed in HAR 6-74-22(b) (a.k.a. Utility's Schedule Q Tariff).

Regarding direct negotiations, KIUC interprets this mechanism to be applicable when at least the following two scenarios exist:

- 1) There is a known (i.e., existing) wholesale IPP that has or may soon have excess capacity/energy with which they can entertain this mechanisms, and
- 2) The utility and/or 3<sup>rd</sup> party is interested solely in a short-term contract.

KIUC believes that this docket is intended to evaluate competitive bidding as a means for a utility to acquire long-term supply resource from new generating facilities, and that a direct negotiating mechanism should not be considered as part of this docket.

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**PUC-IR-52 (cont.)**

- b. Identify those situations where other methods such as standard offers or direct negotiations might be appropriate alternatives to competitive bidding.

**Response:** Please see the response to PUC-IR-40b above.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-53 (All Parties)** Ref: HECO-CA-IR-34 at 67.

What are the benefits and drawbacks to a utility offering utility-controlled sites for 3<sup>rd</sup> parties to develop in the competitive bidding process? What terms and process should apply?

**Response:** There are many scenarios to take into account when considering the benefits and drawbacks to a utility offering utility-controlled sites. As referenced in the Consumer Advocate's response to HECO-CA-IR-34, in 1995, KIUC's predecessor KE offered its selected site for the next unit of generation through a 3<sup>rd</sup> party competitive bidding process. At the time, this was an innovative approach. KIUC believes, in general, that the biggest benefit this offered was time saving. KE had already identified a preferable site for a generation plant that would provide desired benefits to KE's electrical system. This saved time and resources that would have been needed to evaluate the electrical system benefits associated with other potential sites that may have been offered by developers/bidders. KIUC prefers not to speculate as to the benefits or drawbacks this approach afforded the 3<sup>rd</sup> party bidders.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-55 (All Parties)** Ref: CA SOP at 56 states.

The Commission should ensure that a utility's RFP design and bid package materials are developed in a manner that will ensure an appropriate measure of transparency.

- b. **(All Parties)** What features should be included in the RFP design and bid packages to provide enough information about the selection process so as to maximize participation by the widest possible range of bidders?

**Response:** The RFP should clearly state proposal requirements, submission format, and a detailed schedule for various required RFP activities, including "intent to bid" response, pre-bid conference, proposal due date, evaluation period, and expected contract award date. The RFP should also include a section that describes the proposal evaluation and selection process.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**DOCKET NO.: 03-0372**

**PUC-IR-56 (All Parties)**

- a. Should the Commission have an active role in the RFP development process?

**Response:** As stated in KIUC's response to PUC-IR-45, KIUC believes that it is the utility's responsibility to develop an RFP process and any resulting RFP. In that connection, KIUC does not believe that the Commission should have an active role in this process.

- b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the drafting of the RFP? If so, who should fund the cost of the independent consultant?

**Response:** See the response to part (a) above. KIUC believes that it should be left to the discretion of the utility whether to hire an independent consultant to provide input and recommendations to the utility (but not to the Commission) regarding its RFP.

- c. Should the utility independently develop the RFP (subject to approval by the Commission prior to its issuance)?

**Response:** Yes. See the response to part (a) above.

- d. Should the utility hold a workshop with potential bidders and other interested parties prior to the release of the RFP, and potentially incorporate comments and suggestions into the final RFP?

**Response:** KIUC believes that any workshops, independent of when they occur in the RFP process time-line, should be at the discretion of the utility. KIUC acknowledges that, if and when a workshop was to be held, the RFP process should include a mechanism to reflect any comments or suggestions that can improve or clarify the RFP process.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-57 (All Parties)** Ref: HREA SOP at 13; HECO-HREA-IR-11; CA SOP at 3; HECO-CA-IR-3.

- a. Should different types of resources (e.g., renewable resources, new technologies, and traditional resources; supply-side and demand-side resources, as-available v. firm capacity resources; and distributed resources) compete through the same RFP? or

**Response:** This determination should be at the option of the utility. See the response to PUC-IR-44 above.

- b. Should there be separate RFPs issued for different types of resources, which would all be issued simultaneously, to address a particular need? or

**Response:** This determination should be at the option of the utility. See the response to PUC-IR-44 above.

- c. Should a solicitation be targeted to a particular resource for a particular need, such that there will only be one RFP issued at one time

**Response:** This determination should be at the option of the utility. See the response to PUC-IR-44 above.

- d. Where different types of resources compete through the same RFP, what criteria should be used to evaluate the different benefits of different resources?

**Response:** With the understanding that the criteria used to evaluate different types of needs would depend upon those specific needs (e.g., firm vs. non-firm, renewable vs. fossil-fueled, etc.), KIUC notes that in general, a bid for non-firm energy may focus on the end service (total kwh of energy) and not necessarily the time, duration or magnitude (kw) of delivery while a bid for firm capacity would have criteria specifically addressing time, duration and magnitude of available power.

- e. Discuss the benefits and drawbacks of issuing one RFP for different types of resources versus targeted solicitations that seek a particular resource?

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**PUC-IR-57 (cont.)**

**Response:** KIUC believes that one of the main benefits associated with a non-targeted solicitation is that this approach allows any and all technologies the opportunity to be represented, with the possibility being that a technology/resource unfamiliar to the utility may meet the criteria and ultimately be selected.

One of the main drawbacks to a non-targeted solicitation is that a large amount of personnel time and resources may be required on the bidder end to prepare the numerous bids, as well as on the utility's end to subsequently review and evaluate bids that, due to their inherent characteristics, do not meet the minimum criteria.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-59 (All Parties)**

- a. Who should determine what the required qualifications for bidders (e.g. creditworthiness, reputation, experience) should be?

**Response:** KIUC believes the utility should determine the required qualifications for bidders.

- b. Should the required qualifications of potential bidders be clearly outlined in the RFP?

**Response:** Yes. Please see the response to PUC-IR-55b above.

- c. Should a pre-qualification process be conducted on bidders before accepting bids?

**Response:** No. In general, KIUC believes that the RFP process should require all interested bidders to submit their qualifications as part of their bid proposal. A bidder's qualifications include, among other things, references to other successful projects and access to sufficient resources to perform the work required by the RFP.

- d. If yes, who should pre-qualify the bidders?

**Response:** Not applicable. See the response to part (c) above.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume.

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**DOCKET NO.: 03-0372**

**PUC-IR-60 (All Parties)**

- a. Should the Commission have an active role in the development of the bid evaluation criteria?

**Response:** No. Please see the response to PUC-IR-45 above.

- b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the bid evaluation criteria? If so, who should fund the cost of the independent consultant?

**Response:** Please see the response to PUC-IR-45 above.

- c. Should the utility independently establish the bid evaluation criteria (subject to approval by the Commission prior to its issuance)?

**Response:** Please see the response to PUC-IR-45 above.

- d. Should the utility hold a workshop with interested parties prior to the release of the RFP, to discuss the bid evaluation criteria so that bidders clearly understand how their bids will be evaluated?

**Response:** Please see the response to PUC-IR-56d above.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUC-IR-61 (All Parties)** Ref: HECO-CA-IR-12(b) states.

Some of the important factors may include, but are not limited to, generation system reliability and capacity requirements, opportunities to secure low-cost energy, renewables requirements, emissions impacts, location, risk exposure and rate impacts.

The above response identifies certain factors that should be considered in the review of competitive bid responses. Please identify any other factors that should be considered during the review of the competitive bids.

**Response:** KIUC's member-owned electric cooperative structure should be considered. As stated in KIUC's Statement of Position, "[T]he specifications for the next generation project as well as the evaluation process used in the unbiased selection of bidders will ensure that KIUC and its members are not placed at undue risk. KIUC will also ensure that the competitive bidding process will allow KIUC to continue supplying its members' electrical energy needs with generation that meets KIUC's objectives." See response to Issue 2.a, page 6.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUR-IR-62 (All Parties)** HECO SOP, Exhibit A, at 30 states:

To ensure that all reasonable options are effectively considered, there should be no unreasonable restrictions on sizes and types of projects. It is generally preferable that all types of eligible projects (e.g. supply-side options) have a fair opportunity to compete. (emphasis in original)

And HECO SOP, Exhibit A, at 32 states:

4. Price-related evaluation criteria are the predominant selection criteria. Non-price criteria are used to ensure the project or portfolio is viable and feasible but price is usually the ultimate determinant.

What mechanisms, if any, are appropriate to account for the non-monetary costs or benefits of different types of resources?

**Response:** As a member-owned electric cooperative, KIUC does not agree that price related evaluation criteria should always be the predominant selection criteria. Please see the response to PUC-IR-61 for additional thoughts.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-64 (All Parties)**

- a. Who should hire the Independent Consultant – the utility or the Commission?

**Response:** KIUC believes that the utility should have the discretion to hire an independent consultant as needed. See the response to PUC-IR-45 above.

- b. Should the Independent Consultant develop bid evaluation criteria and make a recommendation for the project award without input by the utility? [Ref. HREA Response to HECO-IR-9 at 11] Or can the input be from all parties?

**Response:** See the response to PUC-IR-45 above. KIUC believes that the utility and not the independent consultant should develop the evaluation criteria, evaluate the proposals, and award the project. At least in KIUC's situation, an independent contractor may not fully understand the unique perspective of an electric cooperative and its members.

- c. Is an Independent Consultant required for all competitive bids – or only those where a utility affiliate does not compete?

**Response:** See the response to part (a) above.

**Sponsor:** Joe McCawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-66 (All Parties)** Ref: CA SOP at 59; HECO-CA-IR-64.

- a. If the Commission adopts the guidelines recommended by the Consumer Advocate, and implements these concepts, are these sufficient to ensure that a utility's participation in the competitive bid process is fair?

**Response:** As stated in KIUC's Statement of Position (page 3), as a very small electric utility, KIUC does not have the staff or expertise, on its own, to develop and build large capital projects such as new electric generators. As such, KIUC has in the past and plans to continue going forward to issue generation requirements in an RFP to allow third parties to provide bids. As such, KIUC does not have a position on the fairness of a competitive bidding process where it addresses the potential for the utility to bid against outside bidders for its generation projects.

- b. What are the advantages and disadvantages of adopting these guidelines?

**Response:** KIUC does not have a position on the guideline's advantages or disadvantages.

- c. What other safeguards should be adopted?

**Response:** KIUC does not have a position on other safeguards.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUC-IR-67 (All Parties)** Ref: HECO-CA-IR-48 states:

The Consumer Advocate recommends that each electric utility should be expected to design bid evaluation processes that are specific to the circumstances of each competitive solicitation, and in keeping with "best practices" in the industry.

To the extent that this approach could potentially allow a utility to tailor specific bid evaluations to favor certain bidders, what safeguards can be implemented to prevent this?

**Response:** As a member-owned electric cooperative, KIUC's business structure has several inherent internal/external safeguards in place. As an electrical cooperative with access to low cost financing from the RUS branch of the United States Department of Agriculture (USDA), KIUC is required to adhere to certain guidelines and loan covenants. Also, as officials elected by the member/customers, KIUC's board of directors has a fiduciary responsibility to insure that a democratic process to govern decisions and policymaking occurs. Moreover, KIUC's proposed revised IRP framework allows the advisory panel made up of KIUC member/customers to not only track the IRP process, but also to make recommendations.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUC-IR-68 (All Parties)** Ref: HECO-CA-IR-68.

The Consumer Advocate suggests a generic policy intended to balance the needs for "transparency" and confidentiality during the bid review process. Please provide specific suggestions on how this balance can be met.

**Response:** Please see the response to PUC-IR-67 above regarding KIUC's cooperative organizational structure.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUC-IR-69 (All Parties) HECO-CA-IR-10.**

- a. Should bidders' track record on past projects be a factor in selection and if so, how significantly should it be weighted? What elements of the track record should be considered?

**Response:** A bidders' track record on past projects should be one of many factors considered in selecting a winning bidder. KIUC's position on this issue is stated in its response to Issue 2a of its Statement of Position (page 7): "These requirements may include, but are not limited to, financial strength, cost, ability to meet project timelines, history of performance, resumes for key management persons, and references. A successful bidder will be chosen following a rigorous process of review and research of all bidders' credentials."

- b. Will according significant weight to a track record cause newer generators without track records or smaller independent companies to lose out to more established utility affiliates or large independents? Should the Commission be concerned about this impact?

**Response:** As indicated in the response to part (a) above, the track record of the bidder is just one of several requirements that KIUC will address when making a selection of potential bidders. KIUC believes that different projects will carry different risk factors and that the weighing of all evaluation criteria will reflect this risk.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUC-IR-70 (HECO and KIUC) Ref: HREA-HECO-IR-21.**

- a. Have any of the utilities offered or provided a tolling option for fuel to any existing IPPs?

**Response:** KIUC's understanding is that a tolling option provides a utility that has a power purchase agreement with an IPP the option to purchase the fuel being used by that IPP if/when the utility can purchase fuel for less than the IPP.

KIUC's only experience on this issue was with the power purchase agreement entered into between KIUC's predecessor KE and Kauai Power Partners (KPP) in 1997 and amended in 1998, under which the purchase of fuel used by the KPP facility was the sole responsibility of KE. Since this was not an option, KIUC is not sure if this was actually a tolling option. However, with the purchase of the KPP facility by KIUC in 2003, this agreement is no longer valid.

- b. Have any of the utilities otherwise offered or had experience with fuel sharing, or with sharing of fuel storage or transport expenses with an IPP?

**Response:** See the response to part (a) above.

- c. If the utilities were to provide tolling options for fuel to the IPPs, might the associated additional fuel purchases by the utility (i.e., as opposed to not purchasing the volume of fuel required by the IPPs) be beneficial to the utility in negotiating future fuel contracts?

**Response:** Yes, there may be economy of scale benefits for a utility to purchase the fuel used by an IPP contracted to that utility. As an electric cooperative, KIUC believes that its access to low cost funding can assist in keeping bids as low as possible or, in the alternative, to allow KIUC to buy its own generation addition under a time and material contract at a lower price than any of the bidders. This provides a fail-safe measure to ensure that bids are competitive.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**DOCKET NO.: 03-0372**

**PUC-IR-71 (All Parties)**

- a. Should the Commission have an active role in the development of the purchase agreement?

**Response:** See the response to PUC-IR-45 above.

- b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the drafting of the purchase agreement? If so, who should fund the cost of the independent consultant?

**Response:** See the response to PUC-IR-45 above.

- c. Should the utility and the winning bidder independently develop the purchase agreement (subject to approval by the Commission prior to its issuance)?

**Response:** See the response to PUC-IR-45 above.

**Sponsor:** Joe McCawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-72 (All Parties)**

Should a copy of the proposed purchase agreement be included as part of the issuance of the RFP?

**Response:** See the response to PUC-IR-24 and PUC-IR-45. However, as a general response, it may be feasible to provide a proposed purchase agreement as part of the RFP where a specific technology, resource, and site location is specifically identified. However, it would not be feasible to do so where various types of technologies, resources or site locations may be sought as part of the RFP, as the form of purchase agreement will likely materially change depending on what the winning bidder may propose.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-73 (All Parties)** Ref: HREA SOP at 10-11; HREA-HECO-IR-11.

Should there be a standard model purchase agreement to be used for all purchases (with possible minor modifications), or should the purchase agreement for each new transaction be separately drafted?

**Response:** KIUC believes that the uniqueness of each potential winning technology combined with the requirements specific to any one RFP all point to the purchase agreement being unique to each transaction.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**DOCKET NO.: 03-0372**

**PUC-IR-74 (All Parties) Ref: HECO-CA-IR-17.**

- a. To what extent should the price and non-price terms of a purchase agreement be subject to subsequent negotiation with the utility and amendment, if the changes are beneficial to both parties and the ratepayers?

**Response:** As a cooperative owned by its member/customers, the benefits to the utility and its ratepayers are essentially one and the same. Therefore, if there are significant benefits to KIUC's membership whether on price or non-price terms, the purchase agreement should be modified to take advantage of those benefits.

- b. What should be the conditions placed on further negotiation?

**Response:** KIUC does not know of any conditions that should be placed on such further negotiations except that the outcome should not negatively impact KIUC's members.

- c. If the utility affiliate is the winning bidder, do your answers to (a) or (b) change, or are there safeguards that would allow for further negotiation with the utility?

**Response:** Please see the responses to PUC-IR-67 referring to internal safeguards for a member-owned electric cooperative such as KIUC.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUC-IR-75 (All Parties)** Ref: CA SOP at 61 states:

...the Commission should make explicit that costs would be recoverable through rates on a "pass-through" basis if incurred through an approved contract that results from an RFP issued in response to approved competitive bidding process.

Are there any circumstances where the Commission might disallow costs resulting from an approved contract that results from an RFP and if so, what are they?

**Response:** KIUC interprets disallowed costs to mean costs incurred by an investor-owned utility that are not recoverable in rates. As a member-owned, non-profit electric cooperative whose "investors" are the member/customer, this information request is not applicable to KIUC.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUC-IR-76 (All Parties)** Ref: HECO-CA-IR-19(b).

- a. In the future, how should we evaluate to what extent the competitive bid process has been "successful" - what are the specific factors that can and should be recorded and evaluated?

**Response:** Generally speaking, the evaluation of success is a subjective matter – what may be deemed successful to some entity, group or individual may be considered a failure by others. In KIUC's situation, one factor that KIUC will consider in determining whether it believes a competitive bidding process was successful is how well the competitive bidding process allows KIUC to continue supplying its members' electrical energy needs with generation that meets KIUC's and its members' overall objectives. These objectives are strategic in nature and generally evolve from KIUC staff and IRP advisory panel.

- b. Should we set target values for these factors, such that continuation or amendment of the competitive bid process may be contingent on meeting these target values?

**Response:** Target values of success will vary from project to project and from utility to utility. In addition, as mentioned above, the evaluation of success is a subjective matter. In KIUC's opinion, it is more important to gauge how well the overall strategic direction was met rather than putting a value of success on a specific project.

- c. What is the appropriate process and time frame for review of the success of the competitive bid process?

**Response:** See the response to part (b) above.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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**PUC-IR-77 (All Parties) Ref: CA SOP at 56 states:**

If a utility can demonstrate that it is doing a particularly good job in resource procurement, the Commission should consider an increase to its allowed return. Conversely, poor performance will require the consideration of a reduction.

- a. What criteria should be applied to determine whether a utility is doing a "good job" in competitive resource procurement?

**Response:**

As a member-owned, non-profit electric cooperative, rate of return is not directly applicable to KIUC. Having said this, however, KIUC believes that defining set criteria for determining whether the utility is doing a "good job in resource procurement" is not a simple matter. KIUC management and staff still have a responsibility to its lenders (RUS, CFC), its Board of Directors, who are elected representatives of the KIUC membership, and its member/customers. As such, KIUC must strive to meet the lender's requirements when borrowing funds for generation additions and strive to accomplish the Board's initiatives with respect to additions of plant, purchase power agreements, and partnerships for new generation. Competitive bidding, if used, would be unique for each of these needs. The ultimate success will be based upon how well a competitive bidding process allows KIUC to continue supplying its member's electrical energy needs with generation that meets KIUC's objectives.

- b. What factors, such as savings or added efficiencies, would a utility have to demonstrate to qualify for an added rate of return?

**Response:**

As a member-owned, non-profit electric cooperative, rate of return is not necessarily applicable to KIUC.

- c. **(All parties except CA)** Do you agree that an increase in return is justified for a utility that successfully implements competitive bidding?

**KAUAI ISLAND UTILITY COOPERATIVE'S RESPONSES TO THE  
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**PUC-IR-77 (cont.)**

**Response:** As a member-owned, non-profit electric cooperative, rate of return is not necessarily applicable to KIUC.

**Sponsor:** Joe M<sup>c</sup>Cawley  
Tim Blume

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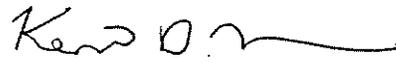
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